

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

TRI-CON, INC. and
STARR SURPLUS LINES
INSURANCE COMPANY,
Plaintiffs

V.

UNION PACIFIC RAILROAD
COMPANY,
Defendants.

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Civil Action No. 1:20-cv-00535

DEFENDANT UNION PACIFIC RAILROAD COMPANY'S
NOTICE OF REMOVAL

Defendant Union Pacific Railroad Company ("Defendant") hereby removes the State Court Action, as defined below, under 28 U.S.C. §§ 1332(a) and 1441(b), because the amount in controversy is greater than \$75,000 and complete diversity of citizenship exists.

I.
LOCAL RULE CV-81 REQUIREMENTS

Pursuant to Local Rule CV-81, Defendant states as follows:

(a) The removed case was styled in the state court as: *Tri-Con, Inc. and Starr Surplus Lines Insurance Company v. Union Pacific Railroad Company*, No. B-206542, 60th Judicial District Court of Jefferson County, Texas (the "State Court Action").

(b) Defendant demanded a jury trial in its answer. **Exhibit 6.** Defendant will be filing a separate jury demand pursuant to Local Rule CV-38(a) and Federal Rule of Civil Procedure 38.

(c)(1) A list of parties to the State Court Action follows: (i) Plaintiff Tri-Con, Inc.; (ii) Plaintiff Starr Surplus Lines Insurance Company; and (iii) Defendant Union Pacific Railroad Company. The State Court Action is pending for all the foregoing parties. No other parties were joined and previously dismissed.

(c)(2) The following exhibits are attached to this Notice of Removal. These constitute all documents required to be filed under Local Rule CV-81 and 28 U.S.C. § 1446(a).

- Exhibit 1** Index of Exhibits to Notice of Removal;
- Exhibit 2** Civil Cover Sheet;
- Exhibit 3** Certified Copy of State Court Action Docket Sheet;
- Exhibit 4** Plaintiff Tri-Con, Inc.'s and Starr Surplus Lines Insurance Company's Original Petition and Plaintiff Tri-Con, Inc.'s Application for Permanent Injunction;
- Exhibit 5** Return of Service for Defendant Union Pacific Railroad Company, dated November 17, 2020; and
- Exhibit 6** Defendant Union Pacific Railroad Company's Original Answer, dated December 10, 2020.

(c)(3) A complete list of attorneys in the State Court Action follows:

For Plaintiff Tri-Con, Inc.:

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(c)(4) Defendant demanded a jury trial in its answer. **Exhibit 6.** Neither of Plaintiffs demanded a jury trial in the State Court Action.

(c)(5) The State Court Action was removed from the 60th Judicial District Court of Jefferson County, Texas, Jefferson County Courthouse, 1149 Pearl Street, Beaumont, TX 77701.

(d) No motions were pending in the State Court Action.

II.

GROUND FOR REMOVAL

Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following “short and plain statement of the grounds for removal.” Plaintiffs brought suit against Defendant related to the flooding of Plaintiff Tri-Con, Inc.’s property, asserting violations of the Texas Water Code, and claims for negligence, nuisance and trespass. Plaintiff Tri-Con, Inc. has requested a permanent injunction against Defendant.

Removal is proper under 28 U.S.C. §§ 1332(a) and 1441(b) because the amount in controversy is greater than \$75,000 and complete diversity of citizenship exists.

A. The amount in controversy is greater than \$75,000.

Plaintiffs’ Original Petition states: “Plaintiffs seek monetary relief that exceeds \$1,000,000.” **Exhibit 4** at ¶ 2.

B. Complete diversity of citizenship exists.

Plaintiff Tri-Con, Inc. is a Texas corporation with its principal office and nerve center in Jefferson County, Texas. Plaintiff Tri-Con, Inc. is a citizen of Texas for diversity purposes.

Plaintiff Starr Surplus Lines Insurance Company is an Illinois corporation with its principal office and nerve center in New York, New York. Plaintiff Starr Surplus Lines Insurance Company is a citizen of Illinois and New York for diversity purposes.

Defendant is a Delaware corporation with its principal office and nerve center in Omaha,

Nebraska. Defendant is thus a citizen of Delaware and Nebraska for diversity purposes.

Therefore, because no party is a citizen of the same state, there is complete diversity of citizenship under 28 U.S.C. § 1332(a).

C. Venue is proper in the Eastern District of Texas, Beaumont Division.

Venue is proper in the United States District Court for the Eastern District of Texas, Beaumont Division, because 60th Judicial District Court of Jefferson County is within this district and division.

D. Removal is timely.

Defendant was served with Plaintiff's Original Petition on November 17, 2020. Therefore, this Notice of Removal is timely because it was filed within 30 days of that service.

III.

STATE COURT NOTICE AND SERVICE ON ALL COUNSEL

Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice of Removal with the Clerk of the District Court of Jefferson County, Texas, in which the State Court Action was originally commenced.

IV.

CONCLUSION

Defendant Union Pacific Railroad Company hereby removes the State Court Action from the 60th Judicial District Court of Jefferson County, Texas, with all further activity to proceed in the United States District Court for the Eastern District of Texas, Beaumont Division.

Dated: December 11, 2020

Respectfully submitted,

KANE RUSSELL COLEMAN LOGAN PC

By: /s/ Marcy Lynn Rothman

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**ATTORNEYS FOR DEFENDANT
UNION PACIFIC RAILROAD COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was forwarded to all counsel of record on this the 11th day of December, 2020 pursuant to the Federal Rules of Civil Procedure.

/s/ Marcy Lynn Rothman

Marcy Lynn Rothman